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May 21, 2014

BY ECF and ELECTRONIC MAIL

Hon. Paul A. Engelmayer
United States Courthouse, Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Re: In re Application of UBS AG For An Order Pursuant To 28 U.S.C. § 1782
To Conduct Discovery For Use in Foreign Proceedings, No. 13-mc-00199

Dear Judge Engelmayer:

On behalf of JPMorgan Chase Bank, N.A. ("JPMC"), we write in response to the letter sent today by UBS AG ("UBS") asserting that the deposition held today was a "failed exercise." This remarkable assertion is refuted by the clear language of the transcript – a rough draft of which was received by both UBS and JPMC at 12:22 pm today, but which UBS tellingly omitted from its submission to Your Honor. A copy of that rough transcript is enclosed for the Court's reference.

In its briefing on the motion to compel the deposition held today, UBS asserted repeatedly that it required: "information about *why JPMC did not transfer the \$65 million from Kaupthing to KSF on October 14, 2008 or after, when there were sufficient funds in Kaupthing's account to cover the transfer.*" UBS' Mem. of Law in Support of Motion to Compel at 7 (Apr. 18, 2014) (Dkt. 22) (emphasis added). Similarly, on May 13, 2014, this Court ordered that JPMC produce an additional witness: "who can testify as to *why a hold was placed on the account following October 14, 2008 when the account was or contained sufficient assets to accomplish the transfer.*" Tr. 8:13-15 (emphasis added). In an effort to finally bring this matter to a close, JPMC made every effort to prepare its witness to comply with the Court's order. Indeed the transcript makes clear that JPMC did fully comply.

At today's deposition, Mr. Ramirez testified that in preparation he asked Mr. Guthe and Ms. Ellis "why wasn't the payment effected on the 14th when there was sufficient funds, and to Leeann's recollection, the funds weren't executed because the account was still in hold." Dep. Tr. 3:21-4:1. Asked why the hold was in place, Mr. Ramirez responded that he was told "that it was *still on hold based on the SWIFT that we received from the Icelandic Authority to put the account [on hold] – who in essence was controlling the bank at the time.*"

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The Honorable Paul A. Engelmayer, Page 2

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Id. at 4:3-9 (emphasis added); see also id. at 7:14-16 (“It was just basically her recollection that the reason the funds did not go out was because of this hold. Q. Because of a hold that resulted from this [SWIFT message]? A. Yes.”); id. at 6:13-7:4 (“Q. And whether the extent to which an order from the Icelandic Financial Services Authority influenced JPMC’s decision not to transfer? A. Yes... this SWIFT is what caused JPMorgan Chase to hold from making any payments. Q. Okay. Including on October 14th or after? ... A. Yes, I would say including and after, yes.”). Later, Mr. Spears asked again whether Mr. Ramirez had received any “indication from either of them as to *what about this SWIFT caused them to – caused JPMC not to make the transfer, any particular part of this SWIFT that ... caused JPMC not [to] make the transfer?* ... A. *Just the fact that it said to put all payments on hold.*” Id. at 7:20-8:4 (emphasis added).

Incredibly, UBS now insists that the deposition was somehow a “failed exercise” because JPMC did not specifically ask Ms. Ellis and Mr. Guthe about the use of the particular word “order” in the SWIFT message sent by Kaupthing. Setting aside the fact that the SWIFT message is a two sentence instruction that JPMC testified caused it to freeze the account, if UBS wanted specific testimony on the use of one word within that instruction it should have so informed JPMC (and the Court) prior to the deposition. Nowhere in any of the submissions made by UBS does it state that UBS requires specific testimony on the significance of the word “order” in the October 9, 2008 SWIFT message.

Mr. Ramirez clearly testified, based on his discussion with Mr. Guthe and Ms. Ellis and the documents he reviewed in connection with his prior deposition, that JPMC did not complete the transfer at issue here because a hold was in place at the direction of the Icelandic authorities then in control of Kaupthing bank. The record is clear on this point.

Respectfully submitted,



James J. Coster

Enclosure

cc: David Spears, Peter Calamari, Damian Cavaleri (via email)

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1 ANDRE RAMI ERZ ROUGH DRAFT
2 The following transcript(s) of proceedings,
3 or any portion thereof, in the above titled
4 matter, taken on any dates, is being
5 delivered UNEDITED and UNCERTIFIED by the
6 official court reporter at the request of
7 defendants' counsel. The purchaser agrees
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16 stenotype code or electronic transmission
17 errors, resulting in inaccurate or
18 nonsensical word combinations, or
19 untranslated stenotype symbols which cannot
20 be deciphered by non-stenotypists.

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3 EXAMINATION BY

4 MR. SPEARS:

5 Q. State your name for the record,
6 please.

7 A. Andre Ramirez.

8 Q. State your business address for the
9 record, please.

10 A. 4 Metrotech Center Brooklyn, New
11 York.

12 THE COURT REPORTER: Counsel, will you
13 please state if you will be ordering a
14 transcript and that you are willing to pay
15 for it.

16 MR. CAVALERI: This is Damian Cavaleri
17 representing Kaupthing Bank and yes, we
18 would like a transcript. Regular delivery
19 right now is fine. If we want something
20 faster, I'll get in touch with you send
21 you an e-mail.

22 MR. BUNTING: This is Matthew Bunting
23 from Quinn Emanuel. We don't need
24 anything beyond what Mr. Calamari has
25 already ordered.

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1 ANDRE RAMIERZ ROUGH DRAFT

2 THE COURT REPORTER: That means you're
3 ordering?

4 MR. CALAMARI: Yes, this is Peter
5 Calamari. Quinn Emanuel just needs one
6 copy regular delivery.

7 THE COURT REPORTER: Thank you.
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8 MR. BUNTING: Correct.

9 Q. Mr. Ramirez, David Spears here.

10 Thank you for getting together with us again for
11 hopefully what will be a short second session.

12 In connection with your preparation
13 for today's deposition, can you tell me what
14 steps you took to prepare?

15 A. I met with Jim and Jen yesterday
16 and also I had a call with Jen, myself, Leearn
17 Ellis and Jens Guthe from our team and abroad.

18 Q. Can you tell me what you asked,
19 what, if anything, you asked Ms. Ellis and
20 Mr. Guthe on the call?

21 A. We asked whether or not -- we asked
22 them about the payment, why wasn't the payment
23 effected on the 14th when there was sufficient
24 funds, and to Leearn's recollection, the funds
25 weren't executed because the account was still

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2 in hold.

3 Q. Did she provide any information
4 about why it was on hold?

5 A. Right, all she said was that it was
6 still on hold based on the swift that we
7 received from the Icelandic Authority to put the
8 account -- who in essence was controlling the
9 bank at the time.

10 Q. I'm going to show you -- could I
11 see the exhibits? Thank you.

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12 I'm going to show you what has been
13 marked as Exhibit 25 for this deposition. If it
14 was marked as an exhibit at your earlier
15 deposition, I note for the record that this
16 would be its second appearance with a -- this
17 time with a different number; it's Exhibit 25
18 and?

19 MR. SPEARS: For the benefit of
20 counsel on the phone, it is a or appears
21 to be a swift message from Kaupthing to
22 JPMC dated October 9th, 2008.

23 Q. I'm handing that to you
24 Mr. Ramirez.

25 Would you look at that for a second

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1 ANDRE RAMIERZ ROUGH DRAFT
2 or as long as you want to?

3 A. Okay.

4 Q. Did you have a chance to review
5 this before or at the time when you spoke with
6 Ms. Ellis and Mr. Guthe?

7 A. No.

8 Q. I want to just read a really short
9 piece of this into the record and then follow-up
10 with some questions.

11 "By order of the Icelandic
12 Financial Services Authority (FSA) we have been
13 ordered to transfer all credit balance on our
14 account held with you. Can you please put all
15 pending payments out of our account on hold and
16 send all balance to," and there's further

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17 information about where the balance should be
18 sent.

19 Do you see what I just read to you,
20 sir?

21 A. Yes.

22 Q. You can tell me what, if
23 anything Ms. Ellis or Mr. Guthe said about the
24 significance of an order of the Icelandic
25 Financial Service Authority and JPMC's decision

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1 ANDRE RAMIERZ ROUGH DRAFT

2 not to transfer the 65 million on or after the
3 October 14th?

4 MR. COSTER: Objection to form. I
5 think it's been asked and answered but you
6 can answer again.

7 A. I'm sorry.

8 Q. Do you want to let her read the
9 question back or is it kind of long --

10 A. The question was whether or not I
11 had any discussions about the disposition of the
12 funds, right?

13 Q. And whether the extent to which the
14 role -- the extent to which an order from the
15 Icelandic Financial Services Authority
16 influenced JPMC's decision not to transfer?

17 A. Yes.

18 MR. COSTER: And this is the
19 October 9th?

20 THE WITNESS: Yes, this is

RAMIREZ ROUGH DRAFT.txt
21 October 9th, so yes this is in essence the
22 hold -- this swift is what caused JPMorgan
23 Chase to hold from making any payments.
24 Q. Okay.
25 Including on October 14th or after?

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1 ANDRE RAMIERZ ROUGH DRAFT
2 MR. COSTER: You can answer.
3 A. Yes, I would say including and
4 after, yes.
5 Q. Did you learn anything from Ms.
6 Ellis or Mr. Guthe as to whether JPMC considered
7 the mention of the Icelandic Financial Services
8 Authority and its order to be important in their
9 decision making?
10 MR. COSTER: Objection to form, beyond
11 the scope. You can answer if you have
12 that specific discussion.
13 A. None. I don't think we had that
14 specific discussion, no. It was just basically
15 her recollection that the reason the funds did
16 not go out was because of this hold.
17 Q. Because of a hold that resulted
18 from this?
19 A. Yes.
20 Q. And no indication from either of
21 them as to what about this swift caused them to
22 -- caused JPMC not to make the transfer, any
23 particular part of this swift that us caused
24 JPMC not the make the transfer?
25 MR. COSTER: Objection to form. You

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2 can answer.

3 A. Just the fact it said to put all
4 payments on hold.

5 Q. And no reference in your
6 discussions with them to the Icelandic Financial
7 Services Authority?

8 A. I'm sorry, repeat that again.

9 Q. No mention by Mr. Guthe or Ms.
10 Ellis of the reference in the swift to the
11 Icelandic Financial Services Authority?

12 A. No.

13 Q. And you didn't ask -- strike that.
14 Did you ask them in your
15 conversation with him yesterday the language in
16 this swift about an order of the Icelandic
17 Financial Services Authority had significance in
18 JPMC's decision not to make the \$65 million
19 transfer?

20 MR. COSTER: Objection to form, asked
21 and answered. He told you that this
22 e-mail was --

23 MR. SPEARS: Okay. Would you read my
24 question back, please?

25 (Whereupon, a portion of testimony was

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1 ANDRE RAMI ERZ ROUGH DRAFT

2 read back.)

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3 MR. COSTER: Objection to form. What
4 was significant to JPMC was beyond the
5 scope.

6 MR. SPEARS: Okay. I would like an
7 answer.

8 MR. COSTER: You can answer. I'm
9 going to give you a leeway, you can
10 answer.

11 MR. SPEARS: Thank you for that.

12 A. There was no discussion about the
13 Icelandic Authority swift. The bottom line --
14 the conversation I had was that why wasn't the
15 funds effective on the 14th when there was
16 sufficient funds and the answer I got was
17 because the hold was still in place.

18 What hold, the hold that was placed
19 by this swift that came in on the 9th of
20 October.

21 Q. Thank you for that.

22 And let me just clarify for the
23 record:

24 In the conversation neither you or
25 counsel who were with you asked the question of

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1 ANDRE RAMIERZ ROUGH DRAFT

2 Mr. Guthe or Ms. Ellis whether the language in
3 this October 9th swift about an order of the
4 Icelandic Financial Services Authority had
5 significance to JPMC in deciding whether to make
6 the transfer?

7 MR. COSTER: Objection to form, asked
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8 and answered. You can answer it again.

9 A. No.

10 Q. Fine, that's a yes or no question.

11 A. No.

12 Q. Did you have any conversations with
13 any other person in addition to the conversation
14 you had with Ms. Ellis and Mr. Guthe yesterday?

15 A. Just with Jen --

16 Q. Other than counsel.

17 A. No.

18 Q. Did you review any documents in
19 connection with your preparations for your
20 testimony today?

21 A. No.

22 Q. And you did not review this swift
23 that's been marked as Exhibit 25?

24 A. In preparation for today, no.

25 MR. COSTER: He's not talking about in

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1 ANDRE RAMIERZ ROUGH DRAFT

2 preparation for your last deposition.

3 He's talking about today's deposition.

4 THE WITNESS: Right, the answer is no.

5 Q. Including you did not review that
6 Exhibit 25 prior to your telephone conversation
7 with Mr. Ellis and Mr. Guthe?

8 MR. COSTER: Objection to form. He
9 had already reviewed in preparation for
10 his earlier depositions. He can answer.

11 MR. SPEARS: You know what, don't do

12 RAMIREZ ROUGH DRAFT.txt
that. Okay. Don't tell him how to answer
13 the question.

14 MR. COSTER: It's a ridiculous
15 question. You've already asked him at an
16 earlier deposition --

17 MR. SPEARS: Okay. Calm down.

18 MR. COSTER: His answer was he
19 reviewed it.

20 MR. SPEARS: Calm down. Calm down.
21 I'm asking questions to the witness, not
22 you.

23 MR. COSTER: He answered that he
24 already reviewed it. Do you want to ask
25 him did he review it again?

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1 ANDRE RAMIERZ ROUGH DRAFT

2 MR. SPEARS: Would you, please, read
3 back the question I asked before
4 Mr. Coster engaged in his extended
5 discussion on the record.

6 (Whereupon, a portion of the testimony
7 was read back.)

8 MR. COSTER: Same objection. You can
9 answer.

10 A. No.

11 MR. SPEARS: No further questions.
12 Thank you, Mr. Ramirez.

13 MR. COSTER: Peter or any folks on the
14 phone any questions?

15 MR. CALAMARI: None from me.

16 MR. CAVALERI: None from me.
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